THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D. APPA RAO

WRIT PETITION Nos: 14499 & 15155 of 2006

Dated: 24.07.2006

Between:

M/s. Hindustan Petroleum Corporation Ltd.,
130/1, Sarojini Devi Road, Secunderabad,
rep., by its Constituted Authority.

..... PETITIONER
(in both writ petitions)

AND

The Government of Andhra Pradesh,
Rep., by its Secretary to Government,
Revenue (CT) Department, Secretariat,
Hyderabad & others.

.....RESPONDENTS
(in both writ petitions)

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D. APPA RAO

WRIT PETITION Nos: 14499 & 15155 of 2006

COMMON ORDER:- **(PER THE HONOURABLE JC,J)**

The petitioner in these two writ petitions is the same i.e., M/s. Hindustan Petroleum Corporation Limited. It is a Government of India owned company within the meaning of Sections 16 and 17 of the Companies Act. The petitioner is carrying on business in refining and trading in petroleum products such as diesel, oil etc. It purchases crude oil, processes the same and distributes the products in the country. It has all India operations. The operations were spread all over the country. The petitioner company is registered as a dealer in almost every State of the Country. At any rate, it is registered in the State of Andhra Pradesh and also in the State of Tamilnadu. The petitioner has a refinery at Visakhapatnam and at Madras. The registered office of the petitioner, however, is in Mumbai. It appears, there was a fire accident in the month of September 1997 in the refinery of the

petitioner's company Visakhapatnam. As a consequence, the crude oil purchased by the petitioner company for some time, it is alleged that, was transported to Chennai refinery for further processing. The petitioner treated those transactions where the crude oil was delivered at Chennai refinery as an interstate sale and claimed exemption from the tax under the APGST Act. Such a claim was initially accepted, but the 4th respondent by his proceedings dated 28.02.2005 revised the assessment of the petitioner for the year 1997-98 and disallowed the claim of the petitioner that the above-referred transactions stand exempt from the liability under the APGST Act. The 4th respondent by further order dated 16.04.2005 also choose to impose penalty at three times the liability assessed by him by his order dated 28.02.2006. Aggrieved by the same, the petitioner carried the matters in appeals to the A.P. Sales Tax Appellate Tribunal. Pending the said appeals, the petitioner sought stay of recovery of both tax and the penalty. The 3rd respondent by the proceedings impugned, dated 19.01.2006, in these two writ petitions rejected the stay applications. Hence, the present writ petitions.

Heard the learned Government Pleader for Commercial Tax.

The fact that the petitioner registered in more than one State under the provisions of the concerned Sales Tax Acts coupled with the fact that the petitioner purchased goods in a particular State and moved the same to some other State, in the absence of any other material, in our opinion, normally constitute an interstate sale. However, depending upon the material on record, an inference can be drawn that the transaction may also attract the provisions of the Sales Tax Act of the concerned State. At any rate, these are the matters to be decided in the appeals and we do not propose to express any opinion at this stage in view of the pendency of the matter.

Apart from the question of law indicated above, the fact remains that the petitioner is a Government of India owned company and it cannot be said, under any circumstances, it would be difficult for the respondents to recover the tax or penalty eventually found due.

In the circumstances, we are of the opinion that these writ petitions can be disposed of at this stage directing the respondents not to recover either the tax or penalty pursuant to the revisionary orders indicated above, pending disposal of the appeals of the petitioner before the Sales Tax Appellate Tribunal.

Having regard to the fact that huge amounts are involved in the appeals before the Tribunal, whether the claim of the respondents is legally tenable or otherwise, we are of the opinion that it is expedient that the appeals of the petitioner be disposed of at an early date. We, therefore, dispose of the writ petitions directing the appellate Tribunal to hear and decide the appeals of the petitioner expeditiously, preferably, within a period of four weeks from the date of receipt of this order. Pending such a final decision, the respondents shall not take any coercive steps to collect either the tax or penalty due, which is the subject matter in these writ petitions. No costs.

_____

J.CHELAMESWAR, J

_____

D. APPA RAO, J

Date: 24.07.2006
Note:- Office to mark a copy to the Sales Tax Appellate Tribunal.
(B/o.)
ES